

FRANK CIUFO,

Petitioner,

vs.

SOMERSET COUNTY AGRICULTURE
DEVELOPMENT BOARD,

STATE OF NEW JERSEY
STATE AGRICULTURE DEVELOPMENT COMMITTEE
OAL DKT. NO.: ADC 15171-12
AGENCY REF. NO.: SADC #1033
(On Remand OAL Dkt. No. ADC 4217-11)

FINAL DECISION

Respondent.

The State Agriculture Development Committee (SADC) determined in its July 26, 2012 final decision in Frank Ciufo v. Somerset County Agriculture Development Board ("Somerset CADB" or "board"), OAL Dkt. No. ADC 4217-11 ("Ciufo I"), that the board properly retained jurisdiction of a right-to-farm dispute between Branchburg Township and Ciufo involving the parking of four (4) trucks on the latter's farm property.

The Somerset CADB heard witness testimony and reviewed a detailed, written factual record. The evidence before the board included a report prepared by Ciufo reflecting that, on an annual basis, 4530 hours, or 73.2%, of the usage of four (4) pick-up trucks with "Commercial" license plates and one (1) dump truck with "Farmer" license plates was devoted to a landscaping business known as "Simple Cuts". The remaining 26.8% (1662 hours) of the annual usage of all of the vehicles was devoted to horticultural activities on the Ciufo farm property. Of the

1662 hours of annual vehicle use allocated to the horticultural operations, the Ciufu report stated that the four (4) "Commercial" pick-up trucks accounted for 501 hours.

The board issued a resolution in March 2011

determining that the primary use of the commercial vehicles on the Ciufu Farm is for the landscaping business, "Simple Cuts", and therefore the jurisdiction in this matter is under the Township of Branchburg, and not the Somerset CADB, as this is not a Right-to-Farm matter, nor does it constitute an activity that is protected by the Right-to-Farm Act[.]

The board dismissed the Ciufu-Branchburg dispute, resulting in an appeal by Ciufu which the SADC transmitted to the Office of Administrative Law (OAL). The SADC's final decision in "Ciufu I" rejected the initial decision of the administrative law judge (ALJ) in which he opined that the board should not have heard the case and, instead, should have transferred the dispute to the SADC due to the absence of an agricultural management practice (AMP) addressing on-farm parking of commercial vehicles.¹ We concluded that not every activity on a

¹ N.J.A.C. 2:76-2.10, which was in effect at the time the initial and final decisions were issued in "Ciufu I", provided:

(c) If a board exists and the dispute concerns activities that are not addressed by an agricultural management practice recommended by the [State Agriculture Development] Committee and adopted pursuant to the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and N.J.A.C. 2:76-2.2[,], or a site-specific agricultural management practice adopted pursuant to N.J.A.C. 2:76-2.3, the board shall forward the complaint to the Committee requesting the Committee's determination of whether the disputed agricultural operation constitutes a generally accepted operation or practice.

See also, N.J.S.A. 4:1C-10.1(c). The current regulation is discussed, *infra*, pp. 6-7.

farm can be addressed by an AMP, and that county agriculture development boards (CADB) have the authority to initially determine whether a controversy implicates permitted agricultural activities listed in N.J.S.A. 4:1C-9 of the Right to Farm Act (RTFA). [Final Decision at pp. 8-10].

Because the SADC's final decision in "Ciufu I" only established that the Somerset CADB acted properly in retaining jurisdiction over the Ciufu-township dispute, we remanded the case to the OAL to determine the merits of Branchburg's complaint that Ciufu was parking commercial nonagricultural vehicles on his farm contrary to municipal zoning requirements.

The SADC has reviewed the May 19, 2016 initial decision in the remanded case, Frank Ciufu v. Somerset County Agriculture Development Board, OAL Dkt. No. ADC 15171-12 ("Ciufu II") as well as the voluminous, written record before the Somerset CADB and OAL, the OAL hearing transcript in "Ciufu II", and the exceptions to that initial decision filed by counsel. We also incorporate by reference our findings of fact and conclusions of law in the final decision in "Ciufu I".

Based on all of the above, the SADC **ADOPTS** the ALJ's determination that Ciufu operates a "commercial farm" as defined in N.J.S.A. 4:1C-3. The SADC also **ADOPTS** the ALJ's decision allowing Branchburg Township to intervene in "Ciufu II", as the municipality clearly had a significant interest in the

disposition of the case. N.J.A.C. 1:1-16.1(a) and 16.3(a).

It is not readily apparent that the Initial Decision dealt with the Ciufu dump truck possessing "Farmer" license plates. Accordingly, the SADC **MODIFIES** the Initial Decision by concluding that the use, parking and storage of that vehicle on the Ciufu farm are entitled to RTFA protection.

Finally, the SADC **ADOPTS** the ALJ's factual and legal conclusions, which mirror and expand upon those set forth in the SCADB's resolution, that the off-site use of four (4) trucks parked or stored on the farm property, bearing commercial vehicle license plates and used in connection with Ciufu's "Simple Cuts" landscaping business, "significantly predominate[s] over their use on the farm itself". However, our affirmance of this aspect of the Initial Decision does not end the analysis of the record before the court, as the ALJ gave no consideration to the 501 hours with which the four (4) "Commercial" pick-up trucks were employed for annual horticultural production.

The SADC is mindful that many commercial farmers engaging in permitted activities set forth in N.J.S.A. 4:1C-9 also operate side-businesses such as landscaping, lawn-cutting and snowplowing, and that there could be some overlap between use of the vehicles and equipment in these enterprises. In addition, many individuals engage full-time in nonagricultural businesses

and professions and devote themselves to agricultural or horticultural production activities on a part-time basis. Ciufo's use of pick-up trucks for part-time horticultural production purposes is but one example of many similarly-situated farming operations throughout the state. Given these realities, it would be unreasonable for us to conclude that the use, parking and storage of all of Ciufo's "Commercial" pick-up trucks are outside the ambit of the RTFA. Instead, a more careful analysis must be based on whether the number of "Commercial" vehicles used for both agricultural and nonagricultural uses is commensurate with the amount of agricultural or horticultural work conducted on a given farm.

In this case, Ciufo's report stated that, on an annual basis, 501 hours of "Commercial" pick-up truck time was devoted to horticultural production activities. However, Ciufo offered no agriculturally-based reason why all four (4) "Commercial" pick-up trucks were needed for 501 hours of farm work. Taking into consideration evidence that the Ciufo farm's horticultural production activities occur during a nine-month (270 day) period, we calculate average daily pick-up truck use for the horticultural business at 1.8 hours. It is also evident that there is a limited amount of agricultural and horticultural production on the Ciufo farm, as described in greater detail in "Ciufo I". For all of these reasons, we **MODIFY** the Initial

Decision by concluding that RTFA protection can permissibly be afforded for the use, parking and storage of one (1) of the "Commercial" pick-up trucks on the Ciufo farm.

Additionally, the ALJ in "Ciufo II" noted that if the RTFA protected the use, parking and/or storage of Ciufo's pick-up trucks, then

the municipal zoning ordinance must[,] in nearly all cases, yield to this protection, as the RTFA provides that the approval of certain permitted agricultural activities on a commercial farm preempts the effect of municipal ordinances and that these practices shall not be considered to create a public or private nuisance, so long as the activity does not directly threaten the public health or safety. (Citations omitted; Initial Decision at p.3).

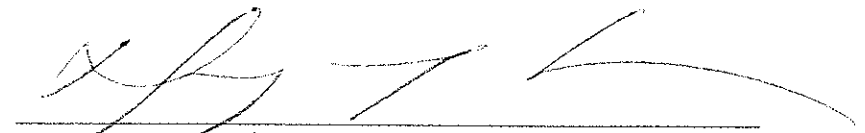
The above quote inadequately describes RTFA protection and requires some clarification. We reiterate that consideration of preemption involves a balancing of the commercial farmer's interest in conducting agricultural activities against the public interest expressed in municipal ordinances, and that preemption can occur upon a showing of a legitimate, farm-based reason for not complying with the local law. Township of Franklin v. den Hollander, 338 N.J.Super. 373, 392 (App.Div. 2001), affirmed 172 N.J. 147 (2002). RTFA protection also cannot be afforded unless the commercial farmer is in compliance with relevant state and federal laws and regulations. N.J.S.A. 4:1C-9 and 10.

The SADC notes that the Somerset CADB's exercise of

jurisdiction and the manner in which it arrived at its determination are consistent with the SADC's April 2014 amendments to the RTFA procedural rules. The rules require that CADBs make an initial determination whether, in the absence of an AMP or site-specific agricultural management practice, a "dispute involves agricultural activity(ies) that is or are included in one or more of the permitted activities in N.J.S.A. 4:1C-9"; if the board concludes that the disputed activity does not fit within that statutory list, then the matter is dismissed. N.J.A.C. 2:76-2.7(e)1 and (g).

IT IS SO ORDERED.

Dated: July 28, 2016



Douglas H. Fisher, Chairman
State Agriculture Development Committee